

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADJUSTACAM LLC,  
Plaintiff

V.

AMAZON.COM, INC.; AUDITEK CORPORATION; BALTIC LATVIAN UNIVERSAL ELECTRONICS, LLC D/B/A BLUE MICROPHONES, LLC D/B/A BLUE MICROPHONE; BLUE MICROPHONES, LLC; CDW CORPORATION F/K/A CDW COMPUTER CENTERS, INC; CDW, INC.; CDW, LLC; COMPUSA.COM, INC.; COBRA DIGITAL, LLC; CREATIVE TECHNOLOGY LTD.; CREATIVE LABS, INC.; DELL, INC.; DIGITAL INNOVATIONS, LLC; EASTMAN KODAK COMPANY; EZONICS CORPORATION D/B/A EZONICS CORPORATION USA D/B/A EZONICS; FRY'S ELECTRONICS, INC.; GEAR HEAD, LLC; GENERAL ELECTRIC COMPANY; HEWLETT-PACKARD COMPANY; INTCOMEX, INC.; JASCO PRODUCTS COMPANY LLC D/B/A JASCO PRODUCTS COMPANY D/B/A JASCO; JWIN ELECTRONICS CORPORATION; KLIP XTREME LLC; KMART CORPORATION; LIFEWORKS TECHNOLOGY GROUP, LLC; MACALLY PERIPHERALS, INC. D/B/A MACALLY U.S.A.; MACE GROUP, INC.; MICRO ELECTRONICS, INC. DBA MICRO CENTER; NEW COMPUSA CORPORATION; NEWEGG, INC.; NEWEGG.COM, INC.; OFFICE DEPOT, INC.; OVERSTOCK.COM, INC.; PHOEBE MICRO INC.; PROLYNKZ, LLC; RADIOSHACK CORPORATION; ROSEWILL INC.; SEARS BRANDS, LLC; SEARS HOLDINGS CORPORATION D/B/A SEARS; SEARS, ROEBUCK AND

CIVIL ACTION NO. 6:10 – CV –  
00329 -- LED

COMPANY; SAKAR INTERNATIONAL,  
INC.; SAKAR, INC.; SDI TECHNOLOGIES,  
INC.; SOFTWARE BROKERS OF  
AMERICA INC. DBA INTCOMEX  
CORPORATION D/B/A INTCOMEX;  
SYSTEMAX, INC. D/B/A COMPUSA;  
TARGET CORP.; TIGERDIRECT, INC.;  
TRIPPE MANUFACTURING COMPANY  
D/B/A TRIPP LITE; AND WAL-MART  
STORES, INC.,  
Defendants

**ANSWER OF THE DEFENDANT, GEAR HEAD, LLC TO THIRD AMENDED  
COMPLAINT FOR PATENT INFRINGEMENT**

The defendant, Gear Head, LLC (“Gear Head”), answers the third amended complaint of the plaintiff, AdjustaCam LLC (“AdjustaCam”) as follows:

**PARTIES**

1. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Complaint.
2. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Complaint.
3. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint.
4. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint.
5. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Complaint.
6. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Complaint.

7. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Complaint.

8. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Complaint.

9. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Complaint.

10. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint.

11. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Complaint.

12. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Complaint.

13. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Complaint.

14. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Complaint.

15. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. Gear Head admits the allegations contained in Paragraph 16 of the Complaint.

17. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Complaint.

18. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Complaint.

19. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 19 of the Complaint.

20. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 20 of the Complaint.

21. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Complaint.

22. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Complaint.

23. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 23 of the Complaint.

24. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 24 of the Complaint.

25. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 25 of the Complaint.

26. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Complaint.

27. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Complaint.

28. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 28 of the Complaint.

29. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 29 of the Complaint.

30. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Complaint.

31. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 31 of the Complaint.

32. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 32 of the Complaint.

33. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 33 of the Complaint.

34. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Complaint.

35. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Complaint.

36. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 36 of the Complaint.

37. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 37 of the Complaint.

38. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 38 of the Complaint.

### **JURISDICTION AND VENUE**

39. Paragraph 39 of the Complaint purports to describe the jurisdiction in this matter. Paragraph 50 makes legal conclusions to which Gear Head is not obligated to respond.

40. Paragraph 40 of the Complaint purports to describe the venue in this matter. Paragraph 40 makes legal conclusions to which Gear Head is not obligated to respond.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 5,855,343**

41. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 41 of the Complaint.

42. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 42 of the Complaint.

43. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 43 of the Complaint.

44. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 44 of the Complaint.

45. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 45 of the Complaint.

46. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 46 of the Complaint.

47. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 47 of the Complaint.

48. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 48 of the Complaint.

49. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint purports to describe the jurisdiction in this matter. Paragraph 50 makes legal conclusions to which Gear Head is not obligated to respond.

51. Paragraph 51 of the Complaint purports to describe the venue in this matter. Paragraph 51 makes legal conclusions to which Gear Head is not obligated to respond.

52. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 52 of the Complaint.

53. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 53 of the Complaint.

54. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 54 of the Complaint.

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81. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 81 of the Complaint.

82. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 82 of the Complaint.

83. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 83 of the Complaint.

84. Gear Head denies the allegations contained in Paragraph 84 of the Complaint.

85. Gear Head denies the allegations contained in Paragraph 85 of the Complaint.

86. Gear Head denies the allegations contained in Paragraph 86 of the Complaint.

87. Gear Head denies the allegations contained in Paragraph 87 of the Complaint.

88. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 88 of the Complaint.

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140. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 140 of the Complaint.

141. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 141 of the Complaint.

142. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 142 of the Complaint.

143. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 143 of the Complaint.

144. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 144 of the Complaint.

145. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 145 of the Complaint.

146. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 146 of the Complaint.

147. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 147 of the Complaint.

148. Gear Head denies that Gear Head has damaged AdjustaCam or that Gear Head is liable to AdjustaCam for any amount.

149. Gear Head states that AdjustaCam's right to discovery is governed by the rules of civil procedure. Gear Head denies that it infringes the '343 Patent and denies that any infringement was or is willful and reckless.

WHEREFORE, Gear Head respectfully requests that this matter be dismissed against it and that it be awarded costs, including reasonable attorney's fees incurred in defending this matter.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE / FAILURE TO STATE A CLAIM**

AdjustaCam fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE / INVALIDITY**

Upon information and belief, the '343 patent and all claims contained within the patent are invalid for failure to satisfy the requirements of patentability under 35 U.S.C., including but not limited to §§101, 102, 103, and 112.

**THIRD AFFIRMATIVE DEFENSE / NON-INFRINGEMENT**

Gear Head has not infringed and does not infringe, induce infringement or contributorily infringe any claim of the '343 patent either literally or under the doctrine of equivalents.

**FOURTH AFFIRMATIVE DEFENSE / PATENT MARKING**

AdjustaCam is not entitled to any damages for alleged infringement because its failure to comply with the marking requirements of 35 U.S.C. § 287 and/or its failure to otherwise give notice that Gear Head allegedly infringed the '343 patent.

**FIFTH AFFIRMATIVE DEFENSE / EQUITABLE DEFENSES**

AdjustaCam's claims are barred by the equitable doctrines of laches, unclean hands, estoppel and/or a waiver.

**SIXTH AFFIRMATIVE DEFENSE / UNAVAILABILITY OF INJUNCTIVE RELIEF**

AdjustaCam is not entitled to injunctive relief because any injury is not immediate and irreparable; AdjustaCam has an adequate remedy at law; the balance of hardships favors no injunction; and the public interest is best served by no injunction.



**SEVENTH AFFIRMATIVE DEFENSE / RESERVATION OF RIGHTS**

Gear Head reserves all affirmative defenses under Rule 8C of the Federal Rules of Civil Procedure, the Patent Laws of the United States or any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

**GEAR HEAD DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.**

Dated: August 30, 2011

Respectfully submitted by:

Patricia L. Davidson



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ATTORNEYS FOR DEFENDANT  
GEAR HEAD, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on the 30<sup>th</sup> day of August 2011 in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

A handwritten signature in black ink, appearing to read "Patricia L. Davidson", is written over a light green rectangular background.

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Patricia L. Davidson